

ID: CCA-224133-09

Number: **200935026**

Office:

Release Date: 8/28/2009

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From:

Sent: 2/24/2009

To:

Cc:

Subject: []

Here is the response from [] regarding the [] case

You requested on views on whether the Service can reach, by levy, proceeds from the defined benefit plan in which the taxpayer was a participant. We have concluded that the Service cannot.

The facts as they have been presented to us can be summarized as follows: The RO submitted for approval a request to levy on the taxpayer's retirement plan. Shortly thereafter, in a letter to the pension plan, also signed by the taxpayer's spouse, the taxpayer requested a full withdrawal of funds from the plan, with the proceeds payable to the Service. At about the same time, the taxpayer liquidated assets and turned the proceeds over to the Service. Shortly thereafter, the taxpayer committed suicide. A few weeks after the death of the taxpayer, the RO renewed the request for approval of the levy on the plan. Approval was obtained on [], and the Service levied [].

It is currently our position that the Service cannot levy on a retirement plan after the death of the taxpayer to collect what the taxpayer could have, but did not, elected to receive while living. It follows then that after the death of the taxpayer the Service may levy on funds already withdrawn by the taxpayer. Here, if the taxpayer's letter were a withdrawal, the levy would have been on funds withdrawn prior to the death of the taxpayer. However, your office has concluded that the taxpayer's letter is insufficient to serve as an election to withdraw funds from the plan. Therefore, we are precluded from arguing that the levy was on withdrawn funds and are left with an levy after the death of the taxpayer where there was no pre-death election. That does not comport with our current position. [REDACTED]

Thanks.